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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman  
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JEFF HATCH-MILLER  
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Arizona Corporation Commission

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IN THE MATTER OF DISSEMINATION OF  
INDIVIDUAL CUSTOMER PROPRIETARY  
NETWORK INFORMATION BY  
TELECOMMUNICATIONS CARRIERS

**DOCKET NO. RT-00000J-02-0066**

**COMMENTS OF ALECA  
REGARDING STAFF'S  
PROPOSED CPNI RULES**

In a memorandum dated April 2, 2004, Utilities Division Staff distributed three alternative sets of draft rules governing the use of customer proprietary network information ("CPNI") by telecommunications carriers, and requested that interested parties submit comments and input. The first set mandates opt-in as the only mechanism by which a telecommunications carrier may share CPNI, and includes verification procedures additional to those in the Federal Communications Commission's ("FCC") rules. *See* 47 C.F.R. §§ 64.2001-2009. The second set uses a combination of opt-in and opt-out procedures, and is based in part on rules adopted by the Washington Utilities and Transportation Commission. The second set also includes verification procedures additional to those in the FCC's rules. The third set uses a combination of opt-in and opt-out procedures modeled after the FCC's rules, combined with additional verification procedures.

The following comments are submitted on behalf of the Arizona Local Exchange Carriers Association ("ALECA"). ALECA is comprised of Arizona Telephone Company, CenturyTel, Copper Valley Telephone, Fort Mojave Telephone Company, Frontier Communications, Gila River Telecommunications, Midvale Telephone Exchange, Navajo Communications, San Carlos

1 Apache Telecom Utility, South Central Communications, Southwestern Telephone Company,  
2 Table Top Telephone Company, Tohono O'Odham Utility Authority, and Valley Telephone  
3 Cooperative. Each ALECA member is a "rural telephone company" as defined in Section 3(27)  
4 of the Telecommunications Act of 1996. ALECA notes that the Fort Mojave Telephone  
5 Company, Gila River Telecommunications, San Carlos Apache Telecom Utility and the Tohono  
6 O'Odham Utility Authority are tribally-owned carriers, and thus, are not subject to the  
7 jurisdiction of the Arizona Corporation Commission ("Commission"). However, each of these  
8 carriers supports ALECA's comments as set forth herein.

9 ALECA's comments are general in nature, as ALECA believes it is premature to provide  
10 detailed substantive comments on any of the three sets of CPNI rules until Staff determines  
11 which of the sets it will recommend to the Commission. Thus, ALECA requests the opportunity  
12 to supplement these comments with specific comments at a later date. ALECA also requests that  
13 Staff schedule one or more public workshops to address the proposed CPNI rules. ALECA and  
14 its members would participate in such workshops.

### 15 INTRODUCTION

16 ALECA urges Staff to propose rules that would allow carriers the flexibility to use either  
17 an opt-in or opt-out approach at the carrier's discretion, and to adopt procedures for customer  
18 notification, confirmation, verification and reminders which are less burdensome and costly than  
19 those included in all three draft sets of rules. Each set contains more stringent customer  
20 notification, confirmation, verification and reminder requirements than those incorporated in the  
21 FCC's CPNI rules. ALECA also believes that the adoption of rules which are significantly  
22 different than the FCC's CPNI rules will lead to potential confusion and added costs of  
23 compliance.

### 24 AN OPT-IN ONLY APPROACH IS UNDULY RESTRICTIVE

25 In its December 2001 bills, Qwest Corporation ("Qwest") included an insert notifying its  
26 Arizona customers that Qwest would be disseminating CPNI unless the customer notified Qwest

1 within 30 days that the customer did not want Qwest to share the customer's CPNI with Qwest  
2 affiliates. On January 16, 2002, the Commission held a special open meeting in response to calls  
3 from Qwest customers expressing confusion over Qwest's notice and its implementation of an  
4 "opt-out" policy. The CPNI docket was initiated as a direct response to the Qwest CPNI notice,  
5 so that the Commission could consider the privacy issues raised by the use of CPNI.

6 Unlike Qwest, ALECA's members are small local exchange carriers, and as such, they are  
7 the harder hit by increased regulatory burdens. They lack the financial and human resources  
8 necessary to make it feasible for them to perform the individual customer contacts required by an  
9 opt-in only rule. Subscribers who are indifferent as to the use of their CPNI are not likely to take  
10 the time to respond affirmatively to a request for opt-in approval. It is unlikely that these  
11 customers will take the time and effort to fill out and return a form, call a toll-free number, or go  
12 on line to visit a website. Consequently, a company that wishes to use CPNI under an opt-in  
13 approach would likely be compelled to contact each subscriber individually to obtain permission.  
14 Arizona's small, rural carriers lack the resources needed to make such a undertaking worthwhile.  
15 Their marketing efforts would be significantly hampered despite the absence of any evidence that  
16 their subscribers oppose the use of their CPNI. ALECA believes that in the long run, consumers  
17 will lose if the Commission adopts an opt-in only requirement.

18 An opt-out approach coupled with an efficient customer notification process will enable  
19 those subscribers who oppose the use of their CPNI to easily prevent it from being used. Carriers  
20 should be required to notify subscribers of their CPNI rights, and after a sufficient waiting period,  
21 such as the 30-day waiting period provided for in the FCC's rules, the carriers could use the CPNI  
22 of any customer that does not oppose its use. An efficient notice would not be so long that it  
23 could not be disseminated via a bill message. More comprehensive descriptions of customers'  
24 rights could be printed in local exchange carriers' directories and posted on company websites  
25 with annual updates. Subscribers will be properly protected if carriers are required to stop using  
26 CPNI any time subscribers so request.

ALECA believes that the choice of an opt-in or opt-out approach adequately protects customer privacy as required under the Telecommunications Act of 1996 and avoids undue burdens and costs on carriers. ALECA further believes that Arizona's CPNI rules should not differ substantially from the FCC's rules.

**AN OPT-OUT APPROACH ENABLES CONSUMERS TO BENEFIT FROM ECONOMIES OF SCALE AND SCOPE**

ALECA's members provide their subscribers with a wide variety of services. In addition to plain old telephone service, a number of members provide long-distance, Internet, wireless and cable television service. A number of members also offer broadband services such as Digital Subscriber Line ("DSL") service. ALECA's members have diversified in order to take advantage of the economies of scale and scope available in multi-product, network industries like telecommunications. Taking advantage of greater efficiencies is exactly the kind of benefits policymakers expect competition to bring, and because ALECA members live and work in the rural communities they serve, they are uniquely positioned to share those benefits with consumers by facilitating economic growth and development.

An opt-in only approach unnecessarily raises the costs of marketing multiple products and services and thereby denies consumers the benefits of economies of scale and scope. Cross selling enables consumers to learn about the multiple services that would not be available but for the efforts of small rural carriers. Concerns of unfair competition that often give rise to the "opt-in only" approach have far less weight in the less densely populated areas served by ALECA's members. Rural carriers should be given the flexibility afforded by an opt-out approach.

Moreover, an opt-in only approach may impede the rapid diffusion of advanced telecommunications technologies in rural Arizona. With the severe limitations accompanying an opt-in only approach, ALECA members could not cost-effectively inform rural residents about the availability and attributes of advanced telecommunications services. Hence, an opt-out approach is more compatible with the 1996 Telecommunications Act's objective of promoting the

1 delivery of advanced telecommunications capability to rural areas on a reasonable and timely  
2 basis.<sup>1</sup>

3 **NOTIFICATION, CONFIRMATION, REMINDER AND VERIFICATION**  
4 **REQUIREMENTS MUST BE EFFICIENT**

5 Customer notice, confirmation, periodic reminder and verification requirements must not  
6 be so costly as to render even an opt-out approach uneconomical. Bill messages, rather than bill  
7 inserts or separate mailings, are the least costly means of directly notifying customers of their  
8 options, and confirming and reminding them of their choices. Smaller carriers with fewer  
9 resources should be given the discretion to craft such notices in a fashion enabling the use of bill  
10 messages. With an opt-out approach, verification is an unnecessary expense. Since the customer  
11 has already contacted the carrier to opt-out, no verification should be needed. If the Commission  
12 requires verification, small rural carriers like ALECA's members should be given maximum  
13 flexibility so they can do it in the most efficient manner possible.

14 **CONCLUSION**

15 The opt-in only approach imposes an unnecessary and costly burden on small rural  
16 carriers such as ALECA's members. Providing ALECA's members with the flexibility to choose  
17 either an opt-in or opt-out approach for obtaining permission to use CPNI, coupled with efficient  
18 customer notice requirements about subscribers' rights to limit CPNI use, will satisfy customer  
19 expectations of privacy and sufficiently address any competitive concerns. ALECA's small rural  
20 carriers should be given the widest possible discretion to craft customer notices, confirmation and  
21 periodic reminders so as to enable the use of more efficient bill messages. Should carriers choose  
22 the opt-out approach, verifying subscribers' elections is not needed.

23 ALECA requests the opportunity to supplement these comments at a later date with  
24 specific comments regarding the set of rules ultimately selected by Staff. In addition, ALECA  
25 requests that Staff schedule one or more public workshops to address the proposed CPNI rules.

26 <sup>1</sup> See 47 U.S.C. § 254; 47 U.S.C. § 309(j); 47 U.S.C. § 706.

1                    RESPECTFULLY submitted this 17th day of May, 2004.

2    SNELL & WILMER

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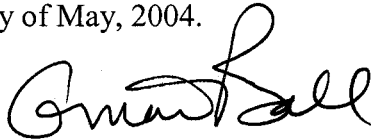
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